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No. 5—Original

In the Supreme Court of the United States

OCTOBER TERM, 1941

THE STATE OF COLORADO, *Complainant*,

vs.

THE STATE OF KANSAS AND THE FINNEY COUNTY WATER USERS' ASSOCIATION, a Corporation, *Defendants.*

Defendants' Exceptions to Report and Recommendations of Special Master

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The State of Kansas and The Finney County Water Users' Association, defendants above named, pursuant to the order of this Court herewith submit their exceptions to the report of Special Master Charles C. Cavanah filed in this cause on May 24, 1943, and set forth said exceptions in the following particulars, to wit:

I

Defendants except to the last paragraph of the Special Master's second finding of fact, and move the court to substitute in lieu thereof the following:

The general character of the River and the

valley, and the country adjoining, are practically uniform from the point where the River emerges from the Rocky Mountains to a point about 200 miles east of the western border of Kansas, *except that in that portion of the River and valley lying in Kansas, there are no entering tributaries except for a few small dry arroyas.* The lands in Kansas attempting to practice irrigation are dependent upon the flow of the Arkansas River which comes into Kansas from Colorado.

Such addition is suggested for the reason that the finding as submitted by the Master is incomplete, since the undisputed evidence shows that there are no tributaries which enter the River in Kansas from the state line east to the mouth of the Pawnee, approximately 190 miles east of the state line.

NOTE.—For the sake of clarity throughout these exceptions, the original text of the Master's report is set out in ordinary type. Wherever new words or phrases are substituted, the same have been italicized, and language objected to in the Master's report has a line drawn through it, thus enabling the court to have before it in the exceptions, the exact changes which are requested.

II

Defendants except to that portion of the first paragraph of the third finding of fact, and move the court

to strike therefrom the phrase contained in said report, which appears in lines 4 and 5 on page 7 thereof, to wit:

> and which increases gradually from Pueblo, Colorado, to Dodge City, Kansas,

so that the sentence will read as follows:

> The tributaries to the River contribute water in measurable quantities which is due to rainfall, surface runoff and seepage return water from irrigation, and in some instances from melting snows in the mountains, ~~and which increases gradually from Pueblo, Colorado to Dodge City, Kansas~~.

for the reason that the finding of the Master as stated is ambiguous and is contrary to the record, in that the undisputed evidence shows there are no tributaries entering the River and no contributions therefrom from the state line to Dodge City.

III

Defendants except to the second paragraph of the third finding of fact, and move the court to substitute in lieu thereof the following:

> There are periodical flood flows of unusable waters ~~of summer seasons~~ flowing in the River and continuing at times for several hours to several days, which consist of sudden melting of snows in the mountain area and rainfall in the plains area, ~~and can and are~~ *which have been* to some extent captured and conserved by ~~small~~ reservoirs *constructed prior to 1920*, ~~and the in-~~

~~completed Caddoa dam and reservoir.~~ *and with the construction of the channel reservoir known as the Caddoa Reservoir now completed to the extent of storage of 270,000 acre feet, and with ultimate storage capacity of 655,000 acre feet, the larger portion of the water supply hitherto passing across the state line into Kansas can be captured and conserved in said Caddoa Reservoir.*

for the reason that the undisputed evidence shows that with the completion of the Caddoa Reservoir a large portion of flash floods hitherto passing down the stream into Kansas can be captured and controlled therein.

IV

Defendants except to the third paragraph of the third finding of fact in its present form, and move the court to substitute in lieu thereof the following language:

> Precipitation, melting snows, temperature, evaporation and wind velocity, and the character of the soil appear to be factors which are inter-related in crop production and of sources of water supply of the Arkansas River, and in the mountainous region along the western boundary of the Arkansas River Basin the annual precipitation runs between 20 and 30 inches, which is principally in the form of snow, and going eastward to the plains region in Colorado, the precipitation in this area ranges generally between 11 and 16 inches, and passing further east to the area from the Colorado-Kansas state line to

> Dodge City, the precipitation ranges from 15 to 20 inches, and continuing east along the river and from where the first tributary in Kansas joins the main stream and then to the Oklahoma state line the precipitation increases 20 to 30 inches. The mean average annual temperature in the Colorado area ranges from two to five degrees lower than in Kansas area and in Western Kansas the wind velocities are higher than in the eastern region in Colorado, which has an effect upon evaporation. The soils in both Colorado and Kansas areas are well suited to irrigation, but the character of the soil in Kansas area, which contains more silt than in the Colorado area, will hold larger quantities of water without loss by deep percolation. *The fractionally greater monthly precipitation in the Kansas area is largely dissipated by the greater evaporation, so that the beneficial effect of precipitation on plant growth in both areas is substantially equal. The result is that crops under natural conditions without the aid of irrigation produce substantially the same yields per acre in eastern Colorado as in western Kansas.*

for the reason that (1) the requested finding is supported by the undisputed evidence; (2) as requested, shows the actual result of the interrelated climatic and soil factors referred to by the Special Master; and (3) is an essential finding in determining the need for irrigation in the respective areas in Kansas and Colorado.

V

Defendants except to Finding of Fact No. Seven and move the court to substitute in lieu thereof the following:

> The ~~irrigated acreage~~ *acreage irrigated* in the State of Colorado ~~of~~ *from* the water supply of the Arkansas River and its tributaries is 469,168 acres which has increased from the time the users of that state first began to irrigate their lands to the present, *169,168 acres being the extent of the increase over the amount of acreage which the Supreme Court of the United States found was being irrigated at the time of its former decision in the case of Kansas v. Colorado,* and such water supply so used is of the waters of the River and its tributaries in Colorado, and has after considering it and the return flow section resulted in the diminution of the yearly average flow at the state line.

for the reason that said increased acreage above referred to is an undisputed fact and is a substantial factor in the depletion of stream flow into Kansas.

VI

Defendants except to the failure of the Master to make a finding upon the extent of the acreage in the irrigation area of Kansas which could have been irrigated from ditches and laterals originally constructed,

and move the court to make an additional finding of fact as follows:

> *That the extent of land which could be irrigated in Kansas from ditches and laterals heretofore constructed, amounts to approximately 414,000 acres, the development of which was rendered impossible by Colorado's water diversions.*

for the reason that this fact is supported by the undisputed evidence and is an essential contributing fact in determining the equities in the apportionment of the available water supply between the states of Kansas and Colorado.

VII

Defendants except to the failure of the Master to make a finding upon the effect of Colorado uses upon the water supply available to Kansas users for irrigation purposes, and defendants move the court to find as follows:

> *Colorado, being the upper state, has the first opportunity to divert and use the waters of the Arkansas River for irrigation purposes, and has so diverted and used said waters to the extent that users in Kansas have been deprived of practically all of the dependable flow of the stream. Such water as at present passes across the state line into Kansas consists of flash floods of a day or a few days duration, most of which is not subject*

to diversion or use. Water which can be captured from such floods is intermittent and bears little or no relation to crop requirements.

Such finding is requested for the reason that (1) the facts stated therein are undisputed in the evidence; (2) the finding contains basic facts which indicate the delivery of such water as is apportioned to the State of Kansas must be made upon a dependable basis in conformity with irrigation needs; (3) the finding contains facts which clearly show that water apportioned to Kansas must be protected from upstream depletion in Colorado.

VIII

Defendants except to the language of the eighth finding of fact, and move the court to substitute in lieu thereof:

Amount of water awarded the State of Colorado. Of the average annual dependable water supply ~~and flow~~ of the Arkansas River and its tributaries there should be awarded ~~and delivered~~ to Colorado *the right to use* 925,000 acre feet *or 83.33% thereof*, and in the event of a ~~deficiency~~ *decrease* or increase in the ~~flow~~ *supply of water* of the river and its tributaries the ~~then available~~ supply in the river and its tributaries should be prorated in relation to the dependable average annual amount so awarded to Colorado.

for the reasons: (1) that the said water supply subject to apportionment between the two states originates in Colorado and is subject to diversion and use, and the use of the word "delivered" in this finding of fact is ambiguous and surplusage; (2) that the percentage of the total dependable supply should be included, since it is a constant factor in determining the pro-ration of the water supply; and (3) the use of the word "flow" is inapplicable, since the term "water supply" is obviously intended by the Master.

IX

Defendants except to the language of the ninth finding of fact, and move the court to substitute therefor the following:

> *Amount of Water awarded to the State of Kansas.* The irrigated acreage in the State of Kansas of the water supply of the Arkansas River and its tributaries is 65,028 acres, and as the Colorado water users having the first opportunity to utilize and consume the stream flow of the river before it passes into the state of Kansas, there should be awarded and delivered to the State of Kansas, at the Colorado-Kansas state line, 185,000 acre feet, *or 16.67%* annually of the average annual dependable water supply ~~and flow~~ of the ~~river stream~~ *basin* for the irrigation in Kansas of the lands now being irrigated, and for lands to be

irrigated, and lands irrigated from the waters of the Arkansas River prior to the time the State of Colorado increased her development in irrigation, and of which amount 150,000 acre feet of water should be delivered to the State of Kansas at the Colorado-Kansas state line during the season from April 1 to October 1, of each year and 35,000 acre feet thereof to be delivered at the state line during the winter season from October 1 to April 1, at such times and in such amounts ~~of the 35,000 acre feet as the same could be delivered for irrigation or storage when~~ required by the water officials of Kansas, and in the event of a ~~deficiency~~ *decrease* or increase in the ~~flow~~ *water supply* of the river and its tributaries, the ~~then available~~ supply ~~in the river~~ should be pro-rated in relation to the dependable average annual amount so awarded to Kansas.

for the following reasons: (1) that the percentage of the water supply apportioned is a constant factor and is necessary in determining the pro rata apportionment; (2) the following language: "Of the 35,000 acre feet as the same could be delivered for irrigation or storage," deleted from the original finding of the Master is ambiguous; is in disagreement with proposed paragraph Two of the Decree, and unless the summer flow is delivered to the State of Kansas in conformity with irrigation needs or upon demand of the water officials of the State of Kansas, no dependable supply could or

would be made available for irrigation uses in Kansas; (3) the substitution of the words "water Supply" for "flow" more clearly expresses the intention of the Special Master.

X

The defendants except to the Special Master's twelfth finding of fact and move the court to substitute in lieu thereof the following:

> *Measuring stations to be established.* The water supply of the Basin comes from two distinct sources, the mountain water supply and the plains water supply. The first ~~is irregular~~ *fluctuates seasonally* in its occurrence as the rise of the streams ~~occurring~~ *occurs* with melting snows ~~and~~. The other or plains run-off ~~being erratic~~ *results from rainfall over the plains area and is erratic, both in occurrence and amount.* ~~sometimes large and sometimes small.~~
>
> *In order to determine the quantum of water available for delivery pursuant to the apportionment herein made, as and when such water originates,* two designated measuring points should be established, one of which will serve as an index of mountain water supply and another station selected which will serve as an index of the plains water supply. *While these stations would record only a portion of the water supply of the basin available for irrigation, use and distribution, the amount measured as passing such stations would serve as the most practical index available from*

which the total water supply as herein apportioned could be computed as such supply originates and is available for use. The water measured at those stations will vary up or down as those two types of the water supply in the Basin varies, and the burden *or* ~~of~~ benefits of wet years and dry years would be borne in the same proportion as the equitable distribution of water supply is decreed. ~~In allowing the water supply~~ One *such* station should be located at Canon City, Colorado, *where measurements of the water passing such station* ~~which~~ would serve as an index of the mountain water *supply.* ~~and~~ The other *such* station, a measuring station ~~to~~ *should* be located near the mouth of the Purgatoire River ~~where the run off at that point is practically all plains run off~~ and ~~it~~ would serve as an index of the plains water supply. ~~and~~ *The total of the water passing such stations constitutes fifty-four percent (54%) of the water supply of the Basin and from the measurements of* the two stations when used together *can be* ~~would determine the amount of river flow~~ *computed the portion of the total water supply of the Basin which shall accrue* ~~to come down the river~~ for delivery to ~~Colorado and to~~ Kansas ~~and the amount of water awarded to the state of Kansas at the state line where a station should be located and a measuring device established to determine the amount of water for delivery to the state of Kansas to be measured day by day as such water supply originates and becomes measurable as stream flow~~ *pursuant to the apportionment herein for use and delivery as the same originates. In order to compute and assure*

a delivery of the sixteen and sixty-seven hundredths percent (16.67%) of the total water supply of the Basin, the amount of water herein awarded to the State of Kansas at the state line, thirty and eighty-seven hundredths percent (30.87%) of the amount passing said two index stations, which equals in amount said sixteen and sixty-seven hundredths percent (16.67%), shall become the basis of an accrual of water for delivery to Kansas and an equivalent amount shall thereafter be subject to delivery as required by Kansas water officials at the state line.

A third station should be located and a measuring device established at or near the Colorado-Kansas state line to measure the amount of water as herein apportioned, which is delivered to the state of Kansas, such deliveries to be measured day by day as the basin water supply originates and is computed through the use of the said two index stations. Daily amounts passing state line stations in quantities larger than the amounts computed from the index stations as accruals for delivery shall be classed as flood water and shall not be considered as a delivery under the allocation herein determined.

Defendants' reasons for the foregoing suggested findings are: (1) That the language used by the Special Master in said twelfth finding of fact is somewhat ambiguous, and from the standpoint of administration, must be clarified; (2) While the use of the two index

stations is probably the only feasible method which can be used to determine the water supply, which is subject to apportionment when and as the same accrues, it is necessary that the finding of fact disclose clearly what the evidence shows the facts to be: namely, the exact proportion of the total water supply of the Basin which the measured flow at the index stations reflect; (3) Since some portion of the total water supply originates below the index station, it is essential that the finding indicate clearly that while the proportional amount of water passing the index stations is the measure of the amount to be delivered to Kansas, such quantity can be satisfied by the delivery of an equivalent amount based upon the accrual as shown by the index stations' records; (4) The finding of the Master with respect to the third station located at the state line, is ambiguous and uncertain. Such station of necessity being at the delivery point, cannot measure the water supply of the basin, but can only record the deliveries of water in conformity with the amount apportioned to Kansas.

XI

Defendants except to Conclusion of Law Two and move the court to substitute therefor the following:

> That the State of Colorado be awarded ~~and delivered to it~~ *the right to use* 925,000 acre feet *or eighty-three and thirty-three hundredths percent (83.33%)* annually of the average annual dependable water supply of the Arkansas River and of the stream flow of the river and its tributaries, and in the event of a ~~deficiency~~ *decrease* or increase in the natural ~~flow~~ *water supply* of the river *and its tributaries* the ~~then available~~ *water* supply ~~in~~ *of* the river and its tributaries should be prorated in relation to the dependable average annual amount so awarded to Colorado.

for the following reasons: (1) That the supply subject to apportionment between the two states originates in Colorado and is there subject to diversion and use, and the use of the word "delivered" in this conclusion of law is ambiguous and surplusage; (2) Not only should the amount in acre feet of the average dependable water supply be given, but likewise the percentage of the average annual dependable water supply, since the percentage factor, which is constant, must be utilized to determine apportionment in the event of increases or decreases over the average annual dependable amount used by the Special Master in apportioning the water

supply; (3) This conclusion of law should be corrected to conform with corrected Finding No. Eight.

XII

Defendants except to the Conclusion of Law No. Three of the Special Master, and move the court to make, in lieu thereof, the following conclusion:

> That there should be awarded and delivered to the State of Kansas, at the Colorado-Kansas state line, *One hundred and Eighty-five Thousand* (185,000) acre feet, *or sixteen and sixty-seven hundredths percent* (*16.67%*) annually of the average annual dependable water supply ~~and flow~~ of the river ~~stream~~ for the irrigation in Kansas of the lands now being irrigated, and for lands to be irrigated, and lands irrigated from the waters of the Arkansas River prior to the time the State of Colorado increased her development in irrigation, and of which amount *One Hundred and Fifty Thousand* (150,000) acre feet of water should be delivered to the State of Kansas at the Colorado-Kansas state line during the season from April 1 to October 1, of each year, and *Thirty-five Thousand* (35,000) acre feet thereof to be delivered at the state line during the winter season from October 1 to April 1, at such times and in such amounts ~~of the 35,000 acre feet as the same could be delivered for irrigation or storage when~~ required by the water officials of Kansas, and in the event of a ~~deficiency~~ *decrease* or increase in the ~~flow~~ *water supply* of the river and

its tributaries, the ~~then available~~ supply ~~in the river~~ should be pro-rated in relation to the dependable average annual amount so awarded to Kansas.

for the following reasons: (1) That the percentage of the water supply apportioned is a constant factor and is necessary in determining the annual apportionment; (2) The following language: "Of the 35,000 acre feet as the same could be delivered for irrigation or storage," deleted from the original finding of the Master is ambiguous; is in disagreement with the proposed paragraph (Two) of the Decree, and unless the summer flow is delivered to the State of Kansas in conformity with irrigation needs or as required by the water officials of The State of Kansas, no dependable supply could or would be made available for irrigation uses in Kansas; (3) The substitution of the words "water supply" for "flow" is clearly the intention of the Special Master; (4) Conclusion No. (Three) should be corrected to conform with the suggested correction in Finding No. Nine.

XIII

Defendants except to the Special Master's Conclusion of Law No. Five and move the court to modify the same by substituting therefor the following:

There is required to be established by the states of Colorado and Kansas ~~three~~ modern measuring devices at *two* stations *herein named, which shall be used* to accurately measure the *flow of* water *passing such stations* ~~supply of the Arkansas River and the flow of the river and its tributaries~~, one of which is to be located at a station at Canon City, Colorado and one to be located near the mouth of the Purgatoire River. *The recorded flows of water passing such two stations shall serve as an index from which may be computed for the purpose of apportionment the total water supply of the Basin when and as the same originates. Thirty and Eighty-seven hundredths percent (30.87%) of the water passing such station, which is sixteen and sixty-seven hundredths percent (16.67%) of the total Basin water supply, shall be the amount of water which accrues to Kansas as its equitable share and which is subject to delivery at the state line, and an equivalent amount of water shall, after the same accrues, be delivered by the State of Colorado at the state line as required by the Kansas state water officials.* ~~and another~~ A third station *shall be established* where the water shall be accurately measured, located on the river at the Colorado-Kansas state line to ~~determine~~ *record* the amount of water ~~flowing in the river that should be~~ delivered to the State of Kansas *day by day pursuant to the apportionment herein determined as such water supply is computed through the use of said index stations as having accrued for delivery to Kansas, but the amounts of water passing such station in daily amounts larger than the accrued amounts as shown by said*

index stations, shall be classed as flood waters and shall not constitute a delivery under the allocation herein unless the same shall have been made pursuant to the request of Kansas state water officials. ~~and~~ The expense of the construction and operation of the measuring devices shall be equally borne by the states of Colorado and Kansas, and in the event the two states are unable to agree upon one to so construct and operate the same, then the court should appoint someone to construct and operate such measuring devices.

For the reasons: (1) That the language as used is somewhat ambiguous; (2) is not sufficiently detailed to reflect the function of such measuring stations; and (3) in order to conform with requested Finding No. Twelve.

XIV

Defendants except to the first paragraph of the Special Master's Ninth Conclusion of Law, and move the court to modify the language therein by substituting in lieu thereof the following:

> That the State~~s~~ of Colorado ~~and Kansas and each of them~~ and ~~their~~ *its* officers, agents, representatives and employees are perpetually enjoined from diverting and using any water from the Arkansas River and its tributaries in excess of the amounts awarded and herein decreed to them,

for the reason that, the State of Kansas, as the lower

state, cannot divert, take or use any of the water supply originating in Colorado, except such flow as is delivered to it at the Kansas-Colorado state line, and therefore the language enjoining the State of Kansas, its officers, agents, representatives, employees and citizens, as suggested by the Special Master, is surplusage.

Exceptions of Defendants to the Recommendations for a Decree Submitted by the Special Master

I

Defendants except to the recommended decree (One) of the Special Master, and suggest that there be substituted therefor and in lieu thereof the following:

> That the State of Colorado is awarded, granted and decreed to be the owner and entitled to the use of ~~and to be delivered to it~~ *Nine Hundred and Twenty-five Thousand* (925,000) acre feet *or Eighty-three and Thirty-three hundredths per-cent* (83.33%) of water annually of the annual dependable water supply ~~and flow of the stream~~ of the Arkansas River and its tributaries, and in the event of a ~~deficiency~~ *decrease* or increase in the ~~natural flow~~ *supply of water* of the Arkansas River and its tributaries the ~~then available~~ supply of water ~~in~~ *of* the river and its tributaries shall be pro-rated in relation to the dependable *annual* amount ~~annually~~ here awarded and granted to the state of Colorado.

for the reasons that: (1) The said water supply subject to apportionment between the two states, originates in Colorado and is subject to diversion and use, and the use of the word "deliver" suggested herein is ambiguous and surplusage; (2) that the percentage of the total dependable supply found by the Master to be Colorado's share should be specifically stated, since it is a constant factor in determining the pro-ration of each year's water supply; and (3) the use of the word "flow" is inapplicable, since the Basin water supply is that which is being apportioned and was obviously so intended by the Special Master.

II

Defendants except to paragraph No. (Two) of the proposed decree and move the court that in lieu thereof, the following should be substituted:

> It is also considered, ordered and decreed that the State of Kansas is awarded, granted and decreed to be the owner and entitled to the use of and to ~~be~~ *have* delivered to it *by the State of Colorado or its water officials* at the Colorado-Kansas state line, *One Hundred and Eighty-five thousand* (185,000) acre feet of water, *or Sixteen and Sixty-seven hundredths percent* (*16.67%*) annually of the annual dependable water supply and flow of the stream of the Arkansas River, and of

which amount *One Hundred and Fifty Thousand* (*150,000*) acre feet thereof shall be delivered to the State of Kansas at the Colorado-Kansas state line during the season from April 1 to October 1 of each year, and *Thirty-five Thousand* (35,000) acre feet thereof to be delivered to the State of Kansas at the Colorado-Kansas state line during the winter season from October 1 to April 1, at such times and in such amounts as and when required by water officials of the State of Kansas, and in the event of a *decrease*, ~~deficiency~~ or increase in the ~~natural flow~~ *water supply* of the Arkansas river and its tributaries, the ~~then available~~ *water supply* ~~supply of water in the river and its tributaries~~ shall be pro-rated in relation to the dependable amount annually here awarded and granted to the State of Kansas.

For the following reasons: (1) That the percentage of the water supply apportioned is a const[redacted] factor and is necessary in determining the annual ap[redacted]ionment of the existing water supply; (2) That the substitution of the words "water supply" for "natural flow of the river and its tributaries" is clearly the intention of the Special Master.

III

Defendants except to paragraph (Four) of the proposed decree and move the court to modify the same and substitute in lieu thereof the following:

It is further considered, ordered and decreed that there is required to be established by the State of Colorado and the State of Kansas ~~three~~ modern measuring devices at *two* stations to measure accurately the *flow of* water *passing such stations,* ~~supply of the Arkansas River and the flow of the river and its tributaries,~~ one of which is to be located at a station at Canon City, Colorado and one to be located near the mouth of the Purgatoire River. *The recorded flows of water passing such two stations shall serve as an index from which may be computed for the purpose of apportionment the total water supply of the Basin when and as the same originates. Thirty and Eighty-seven hundredths percent (30.87%) of the water passing such stations, which is Sixteen and Sixty-seven hundredths percent (16.67%) of the total Basin water supply, shall be the amount of water which accrues to Kansas as its equitable share and which is subject to delivery at the state line, and an equivalent amount of water shall, after the same accrues, be delivered by the State of Colorado, its officers, agents, representatives and employees at the state line as required by the Kansas state water officials* ~~and one to be located where the water flowing in the river shall accurately be measured on the Arkansas River at the Colorado-Kansas state line of the amount of water here decreed to be delivered to the State of Kansas.~~ *A third station shall be established, located on the river at the Colorado-Kansas state line, where the water shall be accurately measured to record the amount of water that is to be delivered to the State of Kansas as*

decreed herein, as such water supply is computed through the use of said index stations to accrue for delivery to Kansas, but amounts of water passing such state line station in quantities larger than the amounts accruing daily as shown by said index stations, shall be classed as flood waters and shall not constitute a delivery under the allocation herein unless the same shall have been made pursuant to the request of the Kansas state water officials, ~~and~~ The expense of the construction and operation of the measuring devices shall be equally borne by the states of Colorado and Kansas, and in the event the two states are unable to agree upon one to so construct and operate the same, then the court shall appoint someone to construct and operate such measuring devices.

For the reasons that (1) the language used in said proposed paragraph is uncertain and in some places ambiguous; and (2) that the functions of the proposed stations suggested by the Special Master have not been made sufficiently clear to permit competent administrative operation.

IV

Defendants except to paragraph (Eight) of the proposed decree and move the Court to modify the same and substitute in lieu thereof the following:

It is further considered, ordered and decreed that the State of Colorado ~~and the State of Kansas and each of them and their~~ *its* officers, agents, representatives; ~~and~~ employees *and citizens* be,

and they are hereby severally perpetually enjoined from diverting, taking and using any water from the Arkansas River and its tributaries in excess of the amounts herein awarded to ~~them~~ *the State of Colorado.*

for the reason that the State of Kansas, as the lower state, cannot divert, take or use any of the water supply originating in Colorado, except such flow as is delivered to it at the Kansas-Colorado state line, and therefore the language enjoining the State of Kansas, its officers, agents, representatives, employees and citizens, as suggested by the Special Master, is surplusage.

Respectfully submitted,

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